

Addressing Disproportionate Representation of Youth of Color in the Juvenile Justice System

As we pay tribute to the 100th anniversary of the juvenile court, we face serious questions about the court's survival and the treatment of children in trouble with the law. Although juvenile crime is decreasing significantly, the number of juveniles in confinement is growing at an alarming rate.¹ This phenomenal increase in youth incarceration is resulting in overcrowded conditions that stretch the capacity of most facilities to the breaking point, endangering staff and youth alike. Here in California, the Board of Corrections Executive Steering Committee recently recommended that more than 1,200 additional beds be constructed for the detention of young people.

If past practice is prologue, young people of color will fill most of those new beds. Juvenile justice professionals, now more than ever, must decide whether to continue to incarcerate young people of color in numbers that cannot be justified by crime statistics alone or to address the problem. This article discusses the reasons for disproportionate confinement of young people of color and the positive steps taken by some jurisdictions toward reducing that disparity.

THE SOCIAL CONTEXT OF DISPROPORTIONATE CONFINEMENT

Shortly after the establishment of the first juvenile court in 1899, W.E.B. Du Bois, one of the most significant American thinkers of the 20th century, wrote in his seminal work *The Souls of Black Folk* that "the problem of the Twentieth Century is the problem of the color-line."² Also around that time, psychologist G. Stanley Hall coined the term *adolescence*, describing it as a period between the ages of 12 and 20 that encompasses a developmental state distinct from other periods of life.³

Today, color and adolescence have converged in a way that has led juveniles to be confined in numbers that should give pause to any civil society. In California, for example, young people of color constitute an astounding 86 percent of youth incarcerated in long-term treatment facilities.⁴ If one were to divide the juvenile justice system into subparts, there would be several points at which decisions are made regarding young people of color and their families. For example, decisions about where to patrol and whom to arrest, charge, and prosecute can widen the net for youth of color.⁵ Although there is probably no deliberate, knowing racism in the majority of cases, the fact remains that young people of color are represented in juvenile justice systems in numbers that cannot be accounted for by law violations alone.⁶

Certain societal factors contribute mightily to the disproportionate number of young people of color in confinement. Not the least of these are the attitudes and beliefs some hold about youth and families of color. The juvenile justice system is full of implicit messages legitimizing the notion that youth of color are beyond rehabilitation, thereby making it permissible to warehouse them in conditions of



JUDITH A. COX
*Santa Cruz
County Probation
Department*



JAMES BELL
*W. Haywood
Burns Institute,
Youth Law Center*

In California and across the country, the juvenile justice system confines many more minority youths than can be justified by the offense rates of those same groups. In this article, probation officer Judith Cox and attorney James Bell discuss the reasons for this disproportionate confinement of young people of color. They then present a blueprint, based on the positive steps taken by Santa Cruz County, California, that jurisdictions can use to reduce that disparity. ■

confinement that are often overcrowded and dangerous.⁷ Though some believe that institutional racism is significantly responsible for minority overrepresentation in the juvenile justice system, only a few jurisdictions have participated in self-examination of their policies and practices to determine whether they are race-neutral.

Our society generally holds certain assumptions about youth of color that subtly contribute to their overrepresentation in the system. These beliefs hold that young people of color are prone to violence and criminal activity, they do not attend school or work, and, worst of all, they expect to be incarcerated and therefore are not uncomfortable with being securely confined. Such assumptions reflect an expectation of failure that in turn is internalized by these young people, who do in fact fail.

Economic factors are particularly significant. Jeremy Rifkin, in his important book *The End of Work*, introduces the concept of "economic irrelevance,"⁸ the condition of those segments of our population who have no possibility of contributing to society because their members have neither desirable skills nor significant purchasing power. Many of the youth of color in the juvenile justice system reflect this circumstance, which results in structural decisions that do not include them in a productive future.

Decision-makers in the juvenile justice system also are influenced by essentially racist theories, articulated by supposed intellectuals, about criminal predisposition among youth of color.⁹ Some politicians have used such pseudoscience to create a political climate in which it is acceptable for a United States senator to refer to young people as "superpredators" in a Senate committee hearing.¹⁰

Legislatures all over the country have enacted laws to "get tough" on juvenile crime by reducing the distinctions between juvenile and adult court. Approximately 30 states now impose mandatory minimums for certain crimes, for instance, while 42 others afford youth less and less confidentiality while in juvenile court.¹¹ In the last two decades, these attitudes, economic factors, and legislative measures have combined to change the face of juvenile justice from a majority of white youth to a majority of kids of color,¹² even though the proportion of white and nonwhite youth crime has remained roughly the same.¹³

National statistics reveal that in most states, African-American youth are overrepresented at every decision-making point in the juvenile justice system. For example, although African-American youth age 10 to 17 constitute 15 percent of the U.S. population, they account for 26 percent of juvenile arrests, 31 percent of delinquency referrals to juvenile court, and 46 percent of juveniles transferred to adult criminal court after judicial hearings.¹⁴

In 1991, the long-term custody rate for African-American youth was nearly five times the rate for white youth.¹⁵ As the numbers indicate, the disproportion grows as youth go deeper into the system.

African-American youth are not the only juveniles disproportionately affected by the juvenile justice system. Recent data reveal that Latino youth are overrepresented in detention facilities at a rate nearly one and a half times their percentage in the at-risk juvenile population.¹⁶ Furthermore, the rate of Latino youths overrepresented in corrections facilities is almost twice the percentage of the population of at-risk Latino youths.¹⁷ Indeed, as demographers begin to measure Latino youth as a separate category, these numbers may increase.

THE EVOLUTION OF SYSTEMIC RESPONSES TO DISPROPORTIONATE CONFINEMENT

The response of policymakers to the skyrocketing disproportionate confinement of young people of color has changed over time but has not really addressed the issue. In the 1980s, reports by The Sentencing Project on racial disproportion in adult corrections raised awareness about the problem among the power elite and policymakers.¹⁸ Youth advocates leveraged this awareness to prompt the U.S. Department of Justice to begin studying the level of minority disproportion in the juvenile justice system. Amendments to the Juvenile Justice and Delinquency Prevention Act (JJDP)¹⁹ in 1988 required states to "address" the issue,²⁰ and four years later the issue was elevated to one that, theoretically, would affect funding.²¹ The issue even got its own acronym: DMC, for "disproportionate minority confinement." As a result, states began to conduct studies and found that, with the exception of Vermont, all states confined young people of color at a rate higher than their representation in the general population. For example, Minnesota reported a minority juvenile population of 12 percent and a minority juvenile detention rate of 59 percent.²²

In the next phase, strategies began to be developed to address the situation, but it is no exaggeration to say that they were not much more than hand wringing. Next came avoidance. For example, if a study of disproportionate confinement revealed that young people between the ages of 13 and 15 living in certain ZIP codes were overincarcerated, the jurisdiction would take the "youth-development" approach. Rather than attacking the problem head on by actually addressing the particular needs of those youth, policymakers would institute after-school programs, tutoring programs, antiviolence programs, and Boys and Girls Clubs for preteens.

Although many of these are, no doubt, fine programs, this response fails entirely to address the issue. It says, in essence, that the problem lies with the youth themselves, who need to be helped to change their ways if they are to stay out of the system. Under this assumption, there is no need to focus on the racial bias in the system's operation. Not surprisingly, the number of youth of color in the system continued to grow at astonishing rates.

To address this problem, an intentional strategic approach is required—one that brings together key players like judges, police, public defenders, community organizations, and prosecutors to take a fresh look at current practices and procedures. One such jurisdiction is Santa Cruz, California. Seattle and Phoenix are also taking similar approaches to address this important problem through their Building Blocks for Youth Initiatives.

DISPROPORTIONATE MINORITY REPRESENTATION IN SANTA CRUZ COUNTY

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has provided resources to selected jurisdictions across the United States to address disproportionate minority confinement. The OJJDP publications documenting the lessons learned from these sites suggest that the overrepresentation of minority children in juvenile institutions is caused by many factors that exist in multiple domains: the juvenile justice system, socioeconomic factors, the educational system, and the family setting. In recognition of the complexity created by the multisystemic aspect of the problem, it is generally recommended that many stakeholders be engaged in a broad-based effort to address the issue. In Santa Cruz County, the probation department's work to reduce disproportionate minority confinement was, in fact, initiated in the context of a task force co-convened by Chief Probation Officer John Rhoads, the county's Latino Strategic Planning Collaborative, and the Latino Affairs Commission. The task force recognized that multiple systems affect detention rates of minority youth, and, therefore, the task force conducted a system-by-system review and made recommendations. Among the justice agencies participating in the task force, the probation department was the only agency that elected to engage in a departmental effort to address disproportionate minority confinement. The following account of the work being done by the Santa Cruz County Probation Department is offered as a resource for other probation departments wishing to engage in similar efforts. Appendix B points out areas in which other juvenile justice agencies might begin to examine their processes.

THE COUNTY

Santa Cruz County is located on Monterey Bay, 85 miles south of San Francisco. The county is bordered by Monterey County to the south, Santa Clara County (Silicon Valley) to the east, San Mateo County to the north, and the Pacific Ocean to the west. With a population of approximately 250,000, Santa Cruz is considered a mid-size county in California. It has a substantial Latino population, accounting for 33 percent of the children ages 10 through 17. In the past decade, children referred to the juvenile justice system have experienced a rate of gang involvement and heroin use higher than children in other California communities of similar size. Latino children represented nearly 64 percent of the children detained in the county's secure juvenile detention facility (juvenile hall) on any given day.

IDENTIFYING THE ISSUES

Before critically analyzing the problem, the probation department undertook several developmental steps. The people who work at the Santa Cruz County Probation Department were not unlike justice practitioners all over the United States. Santa Cruz practitioners knew about disproportionate minority confinement and could see the racial disparity in the detention facility. Managers read research on the topic and conducted a local study of the problem. The study basically supported what was already thought to be true: that the minority children who were brought to the department by local law enforcement and detained by the court were in juvenile hall because they had more serious offense histories and presenting offenses than their nonminority peers. In other words, practitioners felt that there were justifiable reasons that minority children were detained. The staff in Santa Cruz also documented that minority children experienced more risk factors than other children and concluded that the improvement of social and economic conditions would be a prerequisite to solving the problem. Probation workers, of course, had very little control over these aspects of the children's lives.

The conclusions drawn from local studies were not entirely inaccurate; however, they presented only a narrow view. Practitioners discovered that by examining policies, procedures, practices, and programs, the department could identify many elements over which it did have control: clients who experienced barriers to service or lack of access, multiple points of subjective rather than objective decision making, many examples of cultural insensitivity, and unnecessary delays in the court process, which contributed to longer stays in detention.

The department's examination has now become an ongoing effort directed toward continuous improvement rather than a defense of the status quo. While it remains true that there are societal issues that subject minority children to the risk factors for delinquency, the work in Santa Cruz illustrates that the practices of individual justice agencies can exacerbate or alleviate the disparity at each decision point.

TAKING IT STEP BY STEP

A close examination of the data and practices at each decision point in the justice system process can reduce disproportionate minority confinement. In addition, the effort to address DMC may, in turn, reduce recidivism, because it eliminates barriers to service and uses programs that employ evidence-based best practices. The following is a step-by-step account of how the Santa Cruz County Probation Department addressed DMC at the departmental level.²³

Administrative Emphasis, Support, and Leadership

The first step in getting started at the agency level is to embrace the reduction of DMC as a key organizational objective. Accordingly, departmental resources, personnel practices (recruitment, hiring, and training), outcome indicators, and service and program strategies must all support the effort. The agency administrator must play a leadership role in the development and direction of the work. A cultural competence plan for the agency should be developed, and a cultural competence coordinator must be appointed to oversee progress.²⁴ Placing a general emphasis on cultural competence creates a foundation for the ongoing efforts of a core workgroup, which is charged with the responsibility to develop and oversee a workplan addressing DMC.²⁵

Decision-Point Mapping and Data Review

The second step in the agency effort to address DMC is to map the key decision points in the juvenile justice process: arrest, booking, detention, release, and placement.²⁶ There must then be a determination regarding the availability of collected data by ethnicity for each decision point. In Santa Cruz, arrests, bookings, detentions, and program placements are measured by ethnicity on a quarterly basis. If data by ethnicity are not available, a data development agenda must be created. As data become available, the core workgroup should regularly track trends for each decision point and review the data to mark progress or identify problems.

Creating and tracking outcome indicators for detention alternatives and dispositional programs is an effective

way to monitor issues of equal access and program effectiveness. In Santa Cruz, the core workgroup regularly reviews a number of data sources. In cases that ultimately result in an out-of-home placement order, the core workgroup examines the number of days children stay in secure confinement from the initial booking to the date of the dispositional hearing. The workgroup also reviews the number of days in secure confinement from the dispositional hearing to the actual placement of the child in a residential program. The data are presented by gender and ethnicity. The core workgroup can, therefore, monitor the efficiency of the court process and the placement effort that follows the dispositional order. If there is disparity in court processing or placement time by ethnicity or gender, a more detailed inquiry into causal factors is undertaken. Through this process, the core workgroup is often able to identify areas that need improvement in the system. Currently in Santa Cruz, there is no disparity in either court processing or placement time by ethnicity. However, a previously identified problem resulted in the development of a culturally competent drug treatment program now operating for Latino boys.

Objective Criteria for Decision Making

Once the key decision points have been identified, objective criteria for the decisions made at each point must be developed and monitored. For example, the decision that an intake officer at probation makes to hold a child in secure detention pending an initial hearing should be based on a quantifiable set of risk factors. This risk instrument must be free of criteria that may create an unintended racial bias. If, for instance, extra risk points are added for gang involvement or lack of employment, more minority children than other children may be detained for the same offense.

Many stakeholders would argue that gang involvement should result in added points on a risk-based scale; however, the identification of a child as a gang member often involves subjective judgments, and further, determining whether and when a child is no longer a gang member is problematic. It is, therefore, preferable to assign points based on objective, identifiable risk factors such as severity of the current offense or past record of delinquent acts or to use gang criteria only after they have been proven in court. The development of objective criteria for each decision point should involve all the stakeholders.

It is also important to base assignments to and removals from intensive supervision caseloads on clearly stated risk-based criteria, thereby ensuring that the level of service is appropriate to the risk level of the child being supervised in the community. For example, a Latino child

who is assigned to an intensive gang caseload based on the label “gang member,” rather than his or her offense history, will be subjected to a level of scrutiny that could result in longer periods of incarceration. Placing low-risk children in high-level supervision can result in more arrests and confinement time because they are likely to be charged with technical violations. In spite of this problem, youth with nonviolent and minor offense histories are often placed on high-intensity service plans that are not needed to ensure community safety.

Culturally Competent Staff

Ensuring that staff in key positions are culturally competent and have bilingual capacity is key to reducing DMC. Therefore, it is necessary to establish guidelines to ensure that staff have the skills and abilities to provide services to a diverse client population. An inventory of caseloads and clients should be conducted to determine cultural and language profiles. Staff assignments should place bilingual personnel in key positions. All staff should receive ongoing training in cultural sensitivity, cultural competence, and the dynamics of DMC. In Santa Cruz, the client base in juvenile caseloads is 46 percent Latino, and, therefore, 44 percent of the juvenile probation officers are bilingual. Thirty-three percent of the officers are bicultural (Latino/Anglo) and have direct experience with, and knowledge of, Latino cultural customs and values.

Partnerships With Families

Programs and services may exclude probationers’ families or fail to address their needs, thereby resulting in high failure rates for program participants. Ensuring that barriers to family involvement in both judicial proceedings and probationary programs are eliminated can have a positive impact on reducing DMC. Family conferencing and parental outreach at all levels can help remove these barriers. Informational sessions or written materials also help families understand and participate in the court process.

A lack of understanding about the purpose of the personal questions asked by probation officers during interviews for intake and social study reports often makes parents feel threatened and defensive. If parents do not understand the purpose of the detention hearing and the importance of their ability to supervise their child, they may appear uncooperative and thereby increase the likelihood of a detention recommendation for their child. This dynamic can be particularly acute when ethnic, cultural, socioeconomic, or language differences create communication challenges.

If agencies are to establish healthy partnerships with parents, they must have a way to consider parental atti-

tudes about programs and services. The use of customer surveys and parent advocates can help identify barriers to service that negatively affect family involvement. These communication tools can also increase parents’ basic understanding of the court process.

It is important to ask parents whether agency or court efforts to communicate with them are clear and effective. Based on feedback from parents, agencies may need to adjust or augment their hours of operation, the tone and language of their official letters, and the content of their parental orientation programs and brochures. Parents may also be asked to comment on and assist in planning services for their children.

In Santa Cruz, the probation department has contracted with two or three parents to provide advocacy and liaison activities with other families going through the system. These parent partners also represent the voice of parents on planning councils, where they assist in developing programs and services. Santa Cruz also employs a bilingual, bicultural specialist who conducts family conferences to facilitate the development of service plans based on strengths and concerns identified by family members. Another strategy to increase family involvement at site-based programs, such as the juvenile hall and day treatment programs, is to invite families to participate in activities on culturally significant days of celebration.

Alternatives to Formal Handling and Incarceration

A lack of diversion options or inadequate alternatives to secure detention can result in increases in DMC. In addition to applying risk-based detention criteria, jurisdictions must create two or three tiers of community-based alternatives to detention. Involving community-based organizations and the children’s parents in the operation of these supervision programs can help ensure cultural competence and parental support. Programs that provide crisis response,²⁷ strength-based work,²⁸ and wraparound services,²⁹ in addition to tracking and supervision, are particularly successful.

In Santa Cruz, improvements to detention alternatives include electronic monitoring with a wraparound service component provided by a community-based agency. Partnership with a community-based agency can help children connect with healthy activities while they go through the judicial process. Establishing the goals of these alternatives and tracking their outcomes can help ensure that the only children released are those who do not pose a public-safety risk. If children attend their court hearings and do not reoffend while in the community, the court and district attorney can confidently use these alternatives without fearing that public safety will be compromised.

Use of these programs should be tracked by ethnicity. In addition, more than one level of supervision should exist so that the court has an escalation option to use as a response to technical violations, rather than resorting to confinement. For children in postdispositional status, stakeholders should agree on a continuum of court-approved administrative sanctions that the probation officer can impose in lieu of formal court filing for technical violations.

The Santa Cruz probation department has been able to double the number of children diverted from the juvenile justice system by adding four new diversion programs. These diversion programs provide a variety of service strategies, including assessment and educational services for first-time alcohol and substance users, peer court, neighborhood accountability boards, cognitive-behavioral groups, youth development services, and family support. The programs are geographically accessible and employ partnerships with local law enforcement, community-based organizations, and citizen volunteers.³⁰

A Full Continuum of Treatment, Supervision, and Placement Options

A lack of postdispositional options, particularly culturally sensitive programs, can result in overreliance on secure detention by the courts. Stakeholders must carefully define and develop the local continuum of services and ensure that minority youth have equal access at each level. Once again, it is important to review each program for cultural competence. The Standards of Accessibility for Latino Services in Appendix C can be used as an assessment instrument.³¹ Best practices, as documented in research, must be used at each step in the continuum when developing new programs.

The ability of the system to quickly move children out of secure detention into detention alternatives, placements, or programs will reduce juvenile-detention bed days. A lack of adequate options for minority children will result in a disproportionate number of them remaining in detention. Therefore, calculation of length-of-stay data by ethnicity can illustrate the need for additional placement or supervision programs. The data can also indicate which programs are not effective in preventing recidivism. In Santa Cruz, a family preservation program, a school-based day treatment program, and a culturally sensitive residential drug treatment program have helped reduce DMC by eliminating gaps in the local continuum of services. The last program, initiated upon a determination that Latino boys with substance abuse issues were spending a longer time awaiting placement than other children, has elimi-

nated the disparity in confinement rates between Latino boys and other children.

EFFORTS YIELD RESULTS

The results of the work in Santa Cruz have been remarkable. The Latino population in secure detention on any given day in 1997 and 1998 was 64 percent, compared to 33 percent in the general population of children ages 10 through 17. In calendar year 1999, that percentage dropped to 53 percent, and, for the first half of 2000, to 46 percent, a reduction of 18 percent.

The Office of Juvenile Justice and Delinquency Prevention has developed a standard equation for assessing the relationship between the proportion of minorities in the juvenile justice system and in the overall juvenile population. The index is calculated by dividing the percentage of minority children detained (or involved in the system at whichever point is being measured) by the number of minority children in the overall juvenile population. An index value of more than 1 indicates overrepresentation, and 1 represents proportional representation. Before Santa Cruz County began its work on DMC, the county's index value for Latino children in detention was 1.9, similar to the nationally reported figures. The index is currently 1.4. Moreover, the percentage of Latino children committed to the California Youth Authority in Santa Cruz County was reduced from 84 percent in 1998 and 1999 to 33 percent in 2000. This is particularly notable, because researchers have documented that differences in detention rates of ethnic minorities become greater as children progress through the system.

The work of reducing DMC is an ongoing process that is never entirely complete. The work of one agency, or even the efforts of the entire juvenile justice system, may not eliminate DMC; however, the Santa Cruz probation department has demonstrated that one agency can make a difference. This is particularly true of probation departments, which are responsible for many of the key decision points in the juvenile justice continuum.

CONCLUSION

Efforts like those in Santa Cruz and other jurisdictions are courageous and important attempts to address the needs of young people of color, their families, and the governmental systems that serve them. We hope that this article will spur you to begin the process of examining your own systems to ensure that your policies and practices are not contributing to an unwitting increase in disproportionate confinement of youth of color.

1. See DALE PARENT ET AL., CONDITIONS OF CONFINEMENT: JUVENILE DETENTION AND CORRECTIONS FACILITIES: A RESEARCH REPORT 1 (Office of Juvenile Justice & Delinquency Prevention 1994).
2. W.E.B. DU BOIS, THE SOULS OF BLACK FOLK 1 (A.C. McClurg & Co. 1903).
3. G. STANLEY HALL, ADOLESCENCE: ITS PSYCHOLOGY AND ITS RELATIONS TO PHYSIOLOGY, ANTHROPOLOGY, SOCIOLOGY, SEX, CRIME, RELIGION, AND EDUCATION (D. Appleton & Co. 1904).
4. CAL. YOUTH AUTH., SUMMARY FACT SHEET (Jan. 1999); TEXAS YOUTH COMM'N, TEXAS YOUTH COMMISSION POPULATION DEMOGRAPHICS (1999).
5. EILEEN POE-YAMAGATA & MICHAEL A. JONES, AND JUSTICE FOR SOME 1–3, 6–18 (Building Blocks for Youth 2000), www.buildingblocksforyouth.org/justiceforsome/jfs.pdf.
6. *Id.* at 1.
7. SUE BURRELL ET AL., CROWDING IN JUVENILE DETENTION CENTERS: A PROBLEM-SOLVING MANUAL 1–2 (U.S. Dep't of Justice 1998).
8. JEREMY RIFKIN, THE END OF WORK 215 (G.P. Putnam's Sons 1995).
9. See, e.g., RICHARD J. HERRNSTEIN & CHARLES MURRAY, THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE (Free Press 1994).
10. See, e.g., *Juvenile Courts in the 21st Century: Hearing Before the Subcomm. on Youth Violence of the Senate Comm. on the Judiciary*, 105th Cong. (1998) (statement of Sen. DeWine, Member, Sen. Comm. on the Judiciary).
11. PATRICIA TORBET & LINDA SZYMANSKI, JUVENILE JUSTICE BULLETIN: STATE LEGISLATIVE RESPONSES TO VIOLENT JUVENILE CRIME: 1996–97 UPDATE, at tbl.2 (Office of Juvenile Justice & Delinquency Prevention 1998), at ojjdp.ncjrs.org/jjbulletin/9811/confidential.html.
12. See Judicial Detention Alternatives Initiative, Rising Detention Populations Have Caused Overcrowding (Apr. 25, 2000), at www.aecf.org/initiatives/juvenile/rising.htm.
13. See PETER ELIKANN, SUPERPREDATORS: THE DEMONIZATION OF OUR CHILDREN BY THE LAW 114 (Plenum Press 1999).
14. POE-YAMAGATA & JONES, *supra* note 5, at 7, 8, 12.
15. *Id.* at 3.
16. *Id.* at 20–21.
17. *Id.*

18. See, e.g., MARC MAUER, YOUNG BLACK MEN AND THE CRIMINAL JUSTICE SYSTEM: A GROWING NATIONAL PROBLEM (The Sentencing Project 1990).

19. Pub. L. No. 93-415, 88 Stat. 1109 (1974) (codified as amended at 42 U.S.C. §§ 5601–5785 (2000)).

20. Juvenile Justice and Delinquency Prevention Amendments, Pub. L. No. 100-690, 102 Stat. 4434 (1988).

21. Juvenile Justice Amendments, Pub. L. No. 102-586, 106 Stat. 4982 (1992).

22. OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, MINORITIES IN THE JUVENILE JUSTICE SYSTEM 4 (U.S. Dep't of Justice 1999), www.ncjrs.org/pdffiles1/ojjdp/179007.pdf.

23. The Santa Cruz County Probation Department has benefited from the expertise and experience of others. James Bell and Dr. Juan Sanchez, executive director of Southeast Key Program, Inc., have offered valuable perspectives regarding the work on DMC being done nationally and have raised the level of cultural awareness generally.

Many of the steps taken in Santa Cruz are closely related to the Juvenile Detention Alternatives Initiative, which is supported by the Annie E. Casey Foundation. See ROCHELLE STANFIELD, OVERVIEW: THE JDAI STORY: BUILDING A BETTER JUVENILE DETENTION SYSTEM (Annie E. Casey Found. 1999), *available at* www.aecf.org/initiatives/jdai/pdf/overview.pdf. Bart Lubow of the Annie E. Casey Foundation has offered support, technical assistance, and guidance.

The department has also benefited from the assistance of Sue Burrell of the Youth Law Center, San Francisco, who offered technical expertise and support to the work on detention reform and overcrowding sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The OJJDP material on DMC is helpful and informative, as are a wide array of research articles and studies that were reviewed throughout the process.

The aforementioned individuals and organizations helped the department to view the entire landscape and created a context and foundation for the work. An administrator who can provide these types of learning opportunities for his or her staff will find the effort well rewarded.

24. The concept of *cultural competence* appears throughout the article. The following discussion relates particularly to staff and program development. Cultural competence is drawn from a model used in the provision of mental health and social services to identify a set of behaviors, attributes, and policies that enable an agency to work effectively in cross-cultural situations.

NOTES

It is critical to point out that cultural competence is not a fixed characteristic of an agency; rather, it is an ongoing developmental process that agencies and individuals engage in to address diversity in the community-service area. Thus, it is not surprising that cultural competence is often defined as a “system” or a “model.” For instance, in their seminal treatise *Towards a Culturally Competent System of Care*—widely applied at all levels of mental health and other private and public service systems—Terry Cross, Barbara Bazron, Karl Dennis, and Mareasa Issacs define cultural competence as a system that “acknowledges and incorporates at all levels the importance of culture, the assessment of cross-cultural relations, vigilance toward the dynamics that result from cultural difference, the expansion of cultural knowledge, and the adaptation of services to meet culturally unique needs.” TERRY L. CROSS ET AL., *TOWARDS A CULTURALLY COMPETENT SYSTEM OF CARE* 13 (Georgetown Univ. Child Dev. Ctr. 1989).

As this definition illustrates, cultural competence is developed in a program as an intrinsic and pervasive part of service delivery planning and implementation, not as an isolated set of guidelines to be adopted by a program and placed on a shelf. By the same token, cultural competence itself is not a performance outcome that can be numerically quantified and measured. Rather, cultural competence is demonstrated through a cluster of measured activities—such as the Standards of Accessibility for Latino Services (Appendix C)—tailored to the program’s mission and designed to promote access and culturally appropriate services for the program’s client population.

25. See Appendix A.

26. See Appendix B.

27. The term *crisis response* refers to the availability of clinical services in the home at the time of family crisis. Typically, a specially trained mental health clinician, social worker, probation officer, or family advocate responds to a call for assistance and works with the family and child to mediate or resolve a problem that might otherwise result in a law enforcement response or out-of-home placement.

28. The term *strength-based work* refers to a service approach in which the family and child are considered full partners with the probation officer in developing a service plan and resolving problem situations. The probation officer is not viewed as the “expert” with special knowledge but, rather, as a resource for the family. The service strategy is based on the strengths and assets of the family and child rather than on a model that delineates deficits and problems.

29. The term *wraparound services* refers to an individualized care strategy that is characterized by the formation of a child and family team. A care coordinator asks the family to identify all those individuals who either care about the child or can offer support or resources. The team meets regularly to identify strengths and concerns that become the foundation for a service strategy. Service plans are adjusted regularly, and a “never-give-up” philosophy prevails. Typically, flexible funds and a menu of “benefits” or resources are available for whatever purpose the family and child team deems necessary.

30. Many traditional diversion programs are not culturally or developmentally appropriate for minority youth, and these youth therefore fail to complete the programs at a much higher rate than nonminority youth. Furthermore, in many communities, the police or probation department operates the diversion programs. Participants are not truly diverted out of the juvenile justice system. Every effort should be made to create diversion programs and opportunities for minority children that they will find meaningful. The use of community volunteers or mentors can help children succeed in completing program requirements. The vast majority of children who commit a minor offense will not reoffend. Therefore, children should not be elevated into a formal court process simply because they fail to complete the technical requirements of a diversion program. Instead, an administrative record of the diversion failure can be created and then considered as part of the social history if there is a subsequent law violation.

31. See Appendix C.

APPENDIX A**APPENDIX**

**Santa Cruz County Probation Department
DMC Workplan Checklist**

Program Elements	Yes	No	In Progress or Under Dev.
Stated administrative value	X		
Working group charged with outcomes and goals	X		
Cultural competence coordinator	X		
Cultural competence plan	X		
Regular cultural competence training	X		
Staff reflects bilingual, bicultural levels of client base	X		
Key positions have bilingual staff	X		X
Key decision points mapped	X		
Data available for each decision point	X		X
Quarterly review of decision-point data (trends)	X		
Customer surveys identify service barriers			X
Parental involvement at all levels			X
Detention alternatives with community partners and more than one level of alternative	X		
Tracking outcomes of alternatives by ethnicity	X		
Risk-based detention criteria without racial bias	X		
Stakeholders involved in development of risk assessment instrument	X		
Efficient court and placement system with short length of stay in detention—measure length of stay by ethnicity	X		
Clear criteria for assignment to intensive caseloads	X		
Clear criteria for removal from intensive caseloads			X
Administrative sanctions for probation violations			X
Sufficient diversion options	X		
Extensive graduated continuum of services with wraparound services and community partners	X		
Culturally competent residential programs	X		X

APPENDIX

APPENDIX B

SANTA CRUZ COUNTY
Disproportionate Minority Confinement
Map of Juvenile Justice Decision Points

Level I

Agency	Decision Points
Local law enforcement	Field deployment of personnel
Probation department	Intensive caseload assignments

Discussion: At Level I, local law enforcement agencies are making decisions about the level of personnel deployment in various communities. These deployment decisions can affect minority populations disproportionately. In many cases, these deployment decisions are made on the basis of calls for service; therefore, the documenting of calls for service by neighborhoods in conjunction with community mapping can illustrate which communities need services and resources. Law enforcement agencies should develop clearly defined policies and criteria that guide all deployment decisions.

Also at this level, probation departments are making decisions about which clients will be served on intensive caseloads, which may increase arrest rates owing to the higher level of scrutiny to which they are subject. Clearly defined policies and risk-based selection criteria should guide intensive caseload placements. Criteria should also exist to determine when a client can be removed from intensive supervision.

Level II

Agency	Decision Points
Local law enforcement	Decision to warn or divert or Cite and release or Arrest
	<i>If a probation violation:</i>
Probation department	Administrative sanction or arrest

Discussion: At Level II, officers are faced with a decision to warn, divert, sanction informally, cite and release, or arrest. Juvenile law in California requires a “least restrictive” response. Departmental policies, training, and practices should reflect this legal requirement. Efforts should be made to identify and eliminate barriers to releasing minors to parents. Cultural competence and bilingual capacity can affect outcomes. Probation departments may develop a

continuum of court-approved administrative sanctions that are employed prior to arrest for probation violations. Statistics on warnings, diversion or informal sanctions, citations, and arrest should be reported by ethnicity. Suggested booking criteria should be jointly developed by local law enforcement and probation to guide officers when making a decision to transport to secure detention. In addition, law enforcement agencies should track the rate of arrests versus citations to determine whether they are choosing in-custody bookings rather than citations at a rate higher than other jurisdictions or whether their use of citations for similar offenses varies by ethnicity.

Level III

Agency	Decision Points
Juvenile hall staff	Immediate release following booking or Hold for intake probation officer

Discussion: At Level III, the law enforcement officer or probation officer has decided to bring the minor to the juvenile hall (secure detention facility) for booking. The institutional staff must decide whether to release the minor to a responsible adult or hold him or her for the probation intake probation officer. Cultural competence and bilingual capability are useful in contacts with parents. A risk-based detention criteria scale, which does not add unfair risk points for minority youth (e.g., gang membership, employment), should be utilized at this decision point. The use of the scale must be standardized and objective and must be scrutinized constantly.

Level IV

Agency	Decision Points
Probation intake	Release to parent/other agency or Release directly to home supervision or Hold in custody for detention hearing

Discussion: At Level IV, the intake probation officer gathers additional information pertinent to the decision to detain

or release. The risk-based detention scale is adjusted accordingly. Cultural competence and bilingual capability are necessary. Objective and standard criteria should be applied. Staff should work diligently to eliminate barriers to a release to parents. Sufficient culturally competent, community-based alternatives to detention are critical.

Level V

Agency	Decision Points
District attorney	No file or
	File or
	Order further investigation
	<i>If petition is filed:</i>
	Decision re: type and number of offenses charged
	Decision to recommend or oppose release to a detention alternative
	Decision on plea agreements

Discussion: At Level V, the district attorney makes a series of decisions that can affect DMC both at the time of filing and following adjudication, as the minor faces continued exposure to detention based on prior record. The district attorney must develop a position on the use of detention alternatives. Effectiveness of detention alternatives should be measured so that the district attorney, court, and probation can see if minors who are released to the community do make court appearances and remain free of new law violations. The district attorney's office must understand and concur with the objective risk-based detention scale utilized. A system should be developed to objectify and measure requests for investigations, filing decisions, plea agreements, and positions on dispositional outcomes. Statistics on each decision point should be measured by ethnicity. Procedures guaranteeing that individuals with similar past records committing similar crimes are treated the same must be employed and actual practices tracked by ethnicity.

Level VI

Agency	Decision Points
Probation department	<i>At detention hearing:</i>
	Recommend or oppose detention alternatives
	Recommend home supervision or electronic monitoring

Discussion: In California, probation officers can release minors to home supervision but must set the matter for a detention hearing. The court then makes the final determination whether to detain or allow continued participation in home supervision. Many times the intake probation officer will not release to home supervision, and the minor will remain in custody until the detention hearing. The probation officer may then recommend home supervision or a higher level of supervised release such as electronic monitoring. The use of these detention alternatives must be measured by ethnicity and must be available to youth in all areas of the jurisdiction. Culturally competent program providers, community partners, and parents can all be utilized to provide a higher level of supervision. Utilization of these alternatives should be tracked by ethnicity.

Level VII

Agency	Decision Points
Public defender and defense advocates	Active only on legal aspects of defense or
	Employs defense advocates to actively fashion release and dispositional plans with parents, relatives, and programs

Discussion: The defense bar can affect DMC by providing bilingual and bicultural services, tracking cases by ethnicity, and ensuring adequate staffing levels of attorneys and investigators to allow for thorough preparation of cases. Defense firms can go beyond legal advocacy by employing "defense advocates" or social workers who work along with attorneys and actively develop pre- and postadjudication programs and release plans. These advocates contact family members, schools, relatives, and other community resource providers in an effort to present a viable plan to probation and the courts. The defense must understand the risk-based detention scale and actively review the initial scoring of the instrument by probation. Defense advocates ensure that family members are present at hearings and that they understand their role in supervising their children. Defenders should track family contacts, plea agreements, and other service indicators by ethnicity. Defense counsel can actively participate in the establishment of risk-based detention criteria and a continuum of administrative sanctions for probation violations.

APPENDIX

APPENDIX **Level VIII**

Agency	Decision Points
Court	Decision to release
	Decision to utilize home supervision
	Decision to utilize electronic monitoring
	Decision on conditions of release
	Decisions in response to violations of conditions of release
	Decisions on extensions of jurisdictional time frames
	Dispositional decisions
	Decisions on probation violations

Discussion: At this level the court exercises a series of decisions that are in large part informed by legal considerations; however, the court's attitude toward and confidence in risk-based assessments for detention decisions can greatly affect DMC. The efficiency of the court process and the judge's response to violations of his or her orders will also affect the profile of the population in secure detention. A wide array of culturally competent dispositional options must be available to the court. Judges can play a key role in identifying system barriers

for minority youth and families that contribute to DMC. Courts should map dispositional and detention decisions by ethnicity to ensure that youth with similar histories and presenting offenses are handled similarly. The courts need to recognize that a well-articulated continuum of pre- and postdispositional services provides the opportunity for making incremental adjustments in response to both the negative and positive behaviors of the offender.

Level IX

Agency	Decision Points
Probation department	Placement and dispositional options

Discussion: The time frame within which youth are removed from secure detention to the community or placement program is a key variable affecting DMC. The availability of a wide array of culturally relevant dispositional programs is vital. Probation departments should track the time it takes to move youth to services by ethnicity and develop alternatives to secure detention once the jurisdictional order is made. Probation departments must track their utilization of dispositional programs by ethnicity to ensure that youth are receiving equal access to treatment. When a department develops case and service plans, the use of family conferencing can ensure that the plan meets the family's needs.

APPENDIX C

APPENDIX

Standards of Accessibility for Latino Services

- A. All materials are available in Spanish and are culturally sensitive and appropriate.
- B. Services are actively marketed in the Latino community.
- C. All services, including the entry points to services (reception, information, and referral), have bilingual availability and are of equal quality.
- D. Services are located in areas readily accessible to the Latino community.
- E. Services are culturally competent.
- F. Agency leadership is culturally competent, aware of the special needs of the Latino community, and effective in empowering the Latino community.
- G. When recruiting new staff, the agency advertises vacant positions in locations and publications readily accessible to the Latino community and actively conducts outreach to ensure equal employment opportunities for Latinos.
- H. The Latino community is adequately represented on agency policy and advisory boards.
- I. Services are evaluated annually, in part according to these standards of accessibility. If services are accessible and appropriate, the client population will reflect the needs of the Latino community.
- J. Client demographics are representative of the agency's service and geographic areas.
- K. The agency conducts a regular client-feedback process and adjusts services according to customer input.